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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.1656/2004

CORAM: Hon'ble Shri **S.R.Nayak**, Chief Justice &
Hon'ble Shri **D.R.Deshmukh**, J.

Petitioner : Roopial Nayak, aged about 36 years, S/o Shri Ram Singh Nayak, R/o Village Badgaon Charbhata, Post Mahrum, Tahsil Dongargaon, Distt. Rajnandgaon (C.G.)

Versus.

Respondents :
1. The State of Chhattisgarh, Through Secretary, Panchayat and Rural Department, D.K.S.Bhawan, Raipur.
2. Secretary, Panchayat and Rural Development Department, Raipur (C.G.)
3. The Collector, Distt. Rajnandgaon (C.G.)
4. Deputy Director, Panchayat and Social Welfare, Distt. Rajnandgaon.
5. Chief Executive Officer, Janpad Panchayat, Dongargaon, Distt. Rajnandgaon.

Shri Parag Kotecha, Counsel for the petitioner.
Shri Utkarsh Verma, Dy. Govt. Advocate for the State.
Shri Ramkrishna Sharma, Counsel for respondent No.5.

ORAL ORDER
(Passed on 25.07.2006)

The following oral order of the Court was passed by **S.R.NAYAK, C.J.**

On a reference made by Shri Satish K. Agnihotri, J., this writ petition is placed before us for opinion on the referred issue and decision-making.

2. The reference is made in the context of the following facts:

The petitioner was appointed as Panchayat Karmi on 12.11.1995. While working as such, Collector of Rajnandgaon District appointed the petitioner as Secretary, Gram Panchyat-Badgaon Charbhata on

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18.06.1997, as provided under Section 69 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short the "Adhiniyam"). While the petitioner was serving as Secretary of Gram Panchayat Badgaon Charbhata, the District Collector, Rajnandgaon received a complaint alleging that the petitioner has committed certain serious irregularities in maintaining muster rolls. That led to issuance of a show-cause notice dated 9.10.2001 marked as Annexure P/2 to the petitioner calling for his explanation. The petitioner submitted his reply dated 12.10.2001 marked as Annexure P/3 to the show-cause notice. The Collector, Rajnandgaon, not being satisfied with the reply of the petitioner, issued order dated 7.11.2001 marked as Annexure P/4 withdrawing his order dated 18.6.1997. The petitioner feeling aggrieved by the above order of the Collector, Rajnandgaon District, dated 7.11.2001 preferred appeal under Section 91 of the Adhiniyam to the Commissioner, Revenue Division, Raipur. The said appeal was dismissed by the Commissioner by order dated 22.11.2002. The petitioner being aggrieved by the above orders of the Collector and the Commissioner preferred a revision to the Secretary, Panchayat and Rural Development Department, the second respondent herein which also went in vain. Hence, this writ petition.

3. When this matter came up for hearing before Satish Kumar Agnihotri, J., His Lordship doubting the correctness of the opinion of L. C. Bhadoo, J. in **Prakash Chandra Patel v. State of Chhattisgarh and others**[1] dated15.3.2004 has referred this writ petition for decision-making to a Larger Bench.

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4. We have heard learned counsel for the petitioner. It was contended by learned counsel for the petitioner that learned referring Judge has lost sight of the fact that in terms of the proviso to sub-rule (3) of Rule 1 of the M. P. Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'the Rules'), the Rules have no application only to those officers and servants of the State Service who are posted to the Service of the Panchayats under Section 69 of the Adhiniyam or are on loan service to the Panchayats under Section 71 of the Adhiniyam.

5. It is appropriate to first notice the statutory provisions which have bearing of the decision-making. Sub-rule (3) of Rule 1 of the Rules reads as follows:

> "(3) Except as otherwise provided by or under these rules, they apply to all persons employed in connection with the affairs of Zila Panchayats, Janpad Panchayats and the Gram Panchayats and discharging the functions of Zila Panchayat, Janpad and Gram Panchayat:
>
> Provided that nothing in these rules shall apply to officers and servants of the State service who are posted under the Panchayats under Section 69 or are on lone service to the panchayats under section 71 of the Act."

Relevant portion of sub-section (1) of Section 69 of the Adhiniyam reads as under:

> "69. Appointment of Secretary and Chief Executive Officer:- (1) The State Government or the prescribed authority may appoint a Secretary for a Gram Panchayat or group of two or more Gram Panchayats:

Section 71 of the Adhiniyam reads as under:

> "71. Deputation of Government servant.- The State Government may depute to the service of the Panchayat such of its servants as it considers necessary. The service conditions of such deputed servants shall be such as may be prescribed, by the State Government from time to time."

It is nobody's case that the petitioner was appointed by the District Collector, Rajnandgaon on 18.6.1997 as the Secretary of Gram Panchayat Badgaon Charbhata while he was in the service of the State. On the other hand, it is the common case of all that the petitioner was initially appointed as Panchayat Karmi of Gram Panchayat Badgaon Charbhata on 12.11.1995 and when serving as such, he was appointed as Secretary of the said Gram Panchayat by the Collector, Rajnandgaon, as provided under Section 69 of the Adhiniyam. In that view of the matter, the proviso to sub-rule (3) of Rule 1 of the Rules has no application at all to the facts of this case and the interpretation and opinion handed down by L.C.Bhadoo, J., in similar fact situation, is unexceptionable. In the facts and circumstances of the case, the Collector ought not to have passed the impugned order on 7.11.2001 withdrawing his order dated 18.6.1997 whereby and whereunder he had appointed the petitioner as Panchayat Secretary to Gram Panchayat Badgaon Charbhata. It is trite that the impugned action of the Collector, Rajnandgaon tantamounts to reduction in rank and since 'reduction in rank' is a major penalty in terms of Rule 5 (b) (iv) of the Rules, it cannot be imposed on a member of the Panchayat Service without conducting a regular departmental enquiry as envisaged under Rule 7 of the Rules. Therefore, in the circumstance, the impugned order passed by the Collector, Rajnandgaon District cannot be sustained in law.

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6. In the result and for the foregoing discussions, we allow the writ petition quashing the impugned order Annexure P/4 dated 7.11.2001. No costs. The petitioner is entitled to all benefits, pecuniary and otherwise, flowing from the quashing of the impugned order Annexure P/4 dated 7.11.2001. We, however, make it very clear that this order shall not come in the way of Collector, District Rajnandgaon and/or the Gram Panchayat Badgaon Charbhata, as the case may be, from initiating the disciplinary action against the petitioner for the alleged misconduct committed by him, if they are so advised, strictly in accordance with law and in terms of the procedure prescribed in Rule-7 of the Rules.

Sd/-
Chief Justice
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani